

## SECOND DIVISION

[ G.R. No. 135365, August 31, 2004 ]

**ROSARIO BARBACINA, PETITIONER, VS. HONORABLE COURT OF APPEALS, SPOUSES RICHARD GAVINO AND MA. OLIVIA AMORIN GAVINO, CIRILO FARINAS AND THE REGISTER OF DEEDS OF QUEZON CITY AND NATIONAL HOUSING AUTHORITY (NHA) FORMERLY PEOPLE'S HOMESITE AND HOUSING CORPORATION (PHHC), RESPONDENTS.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

Before us is a petition for review on certiorari which seeks to set aside the Decision<sup>[1]</sup> of the Court of Appeals dated August 28, 1998 affirming the dismissal of Civil Case No. Q-92-13538,<sup>[2]</sup> by the Regional Trial Court, Branch 92, Quezon City (RTC for brevity).

The antecedent facts are as follows:

Herein petitioner Rosario Barbacina filed a complaint for annulment of title of private respondents before the RTC, praying that the Conditional Contract to Sell and Deed of Sale executed by the National Housing Authority (NHA) in favor of respondent Cirilo Farinas be nullified and that TCT No. 145007 in the name of respondent Cirilo Farinas and TCT No. 383593 in the name of respondents spouses Richard and Ma. Olivia Gavino, covering a parcel of residential land described as Lot 3, Block 131 located at No. 11 Maginoo St., Barangay Piñahan, Quezon City, be cancelled.

Petitioner alleged in her complaint that: she had been in public, open and adverse possession of said parcel of land in the concept of owner for more than fifty years; the land was formerly owned by the NHA (formerly PHHC) whose policy was to award such lots to occupants thereof; even before the NHA acquired the property, she was already occupying the premises; she filed her application with the NHA (then PHHC) for the award to her of the subject property, but her application was ignored; she later discovered that the subject property had been awarded to Cirilo Farinas and the NHA had executed a Deed of Sale in favor of said awardee, despite the fact that he is not qualified for he never resided in the subject property; TCT No. 145007 dated September 17, 1969 was issued in the name of Cirilo Farinas; said TCT No. 145007 bore the annotation that the vendee shall construct a residential house and complete the same within a period of one year from the date written therein, but Cirilo Farinas never complied with said condition; since the NHA awarded the subject lot to Cirilo Farinas who is a non-resident and non-occupant, the Contract to Sell executed in favor of said awardee and the transfer certificate of title issued in his name are all null and void; Cirilo Farinas eventually transferred the subject lot to respondents spouses Richard and Ma. Olivia Gavino who were then issued TCT No. 383593; since the source of their title is null and void, TCT No.

383593 should likewise be cancelled for being null and void; the subject lot should then revert to the NHA for said agency to award the property to her.

Respondents spouses Gavino filed a motion to dismiss petitioner's complaint on the ground of *res judicata*, alleging that the validity of the title of Cirilo Farinas had already been upheld in two prior cases, i.e., Civil Case No. Q-28101 and Civil Case No. Q-43359. Respondents attached the Order dated February 13, 1980, issued by the trial court in Civil Case No. Q-28101, whereby it dismissed petitioner's complaint for cancellation of title and nullification of deed of sale for utter lack of merit on the grounds that Cirilo Farinas' right of ownership over the lot in question cannot be overridden by herein petitioner's possession of the same and the action to annul the title issued to Cirilo Farinas should have been filed within one year from the date of issuance thereof on September 17, 1969. Respondents likewise attached the Decision dated December 14, 1990 in Civil Case No. Q-43359, whereby the trial court dismissed petitioner's petition for injunction against the NHA on the ground of *res judicata*, as the issues raised therein are the very same ones raised in Civil Case No. Q-28101.

Petitioner then filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 25368, assailing the RTC decision dated December 14, 1990 in Civil Case No. Q-43359, which, in its decision dated February 17, 1992, sustained the trial court's ruling that Civil Case No. Q-43359 was already barred by prior judgment in Civil Case No. Q-28101.

Respondent NHA's Answer reiterated that petitioner's complaint should be dismissed on the ground of *res judicata*, while respondent Register of Deeds presented the defense that it was his ministerial duty to register titles and documents presented to him for registration if he finds the same to be in accordance with law and, in the case of the titles to the lot in question, he found all documents presented to him to be in order.

In her opposition to the motion to dismiss, herein petitioner argued that her present complaint cannot be barred by *res judicata* because there are five issues raised in the present case which were not raised or decided in the prior cases, to wit: (1) whether or not Cirilo Farinas was a qualified PHHC awardee; (2) whether or not the award of the lot to Cirilo Farinas and the Deed of Sale in his favor were valid; (3) whether or not Cirilo Farinas became the absolute owner of the lot in question considering that he failed to comply with the condition inscribed at the back of the title that he should complete the construction of a residential dwelling on said lot within one year from issuance of the title; (4) whether or not Cirilo Farinas, having failed to comply with the aforementioned condition, could sell the subject lot; and (5) whether or not the deed of sale executed by Cirilo Farinas in favor of respondents spouses Gavino is valid.

Thus, the RTC, in Civil Case No. Q-92-13538 issued an Order on December 29, 1992, granting private respondents' motion to dismiss. It ordered the dismissal of the complaint, ruling that indeed, the complaint in this case was already barred by prior judgment.

Petitioner moved for reconsideration of said order of dismissal, reiterating the arguments she raised in her opposition to the motion to dismiss and questioning the existence of the order of dismissal in Civil Case No. Q-28101 as records of said case

could no longer be found with the branch of the Regional Trial Court which issued said order because the records of said court were completely destroyed on June 11, 1988.

On March 9, 1993, the RTC denied petitioner's motion for reconsideration, stating that the issues raised by petitioner had been ruled upon in the previous cases and the existence of the order dismissing Civil Case No. Q-28101 is already established as said order was referred to in the decision rendered in Civil Case No. Q-43359.

Petitioner then appealed to the Court of Appeals and on August 28, 1998, it promulgated its Decision affirming the RTC's dismissal of Civil Case No. Q-92-13538. The appellate court ruled that there was indeed identity of subject matter, causes of action, and parties between the present case docketed below as Civil Case No. Q-92-13538 and the prior case docketed as Civil Case No. Q-28101. No motion for reconsideration was filed by petitioner with the Court of Appeals.

Petitioner then filed the present petition for certiorari, alleging the following:

1. THE HONORABLE COURT OF APPEALS ERRED WHEN, IN ITS DECISION DATED AUGUST 28, 1998 AFFIRMED (sic) THE ORDER DATED DECEMBER 29, 1990 DISMISSING THE CASE ON THE GROUND OF *RES JUDICATA*, AND THE ORDER DATED MARCH 9, 1993, DENYING PETITIONER ROSARIO BARBACINA'S MOTION FOR RECONSIDERATION, ISSUED BY THE REGIONAL TRIAL COURT, BRANCH 76 [should be 92], QUEZON CITY.
2. THE HONORABLE COURT OF APPEALS ERRED WHEN IT DID NOT DECLARE RESPONDENTS CIRILO FARINAS AND SPOUSES RICHARD GAVINO AND MA. OLIVIA AMORIN GAVINO AS PERSONS DISQUALIFIED FOR THE AWARD OF THE PROPERTY DESCRIBED IN TCT NO. 145007 IN THE NAME OF RESPONDENT CIRILO FARINAS AND TRANSFERRED AS TCT NO. 383593 IN THE NAME OF SPOUSES RICHARD GAVINO AND MA. OLIVIA AMORIN GAVINO.
3. THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO DECLARE AS NULL AND VOID THE AWARD OF THE PROPERTY IN QUESTION BY RESPONDENT NHA (FORMERLY PHHC) TO NON-RESIDENT RESPONDENT CIRILO FARINAS TOGETHER WITH THE CONDITIONAL CONTRACT TO SELL AND DEED OF SALE, IF ANY, ENTERED INTO BY AND BETWEEN RESPONDENTS NHA (FORMERLY PHHC) AND CIRILO FARINAS.
4. THE HONORABLE COURT OF APPEALS ERRED WHEN IT DID NOT DECLARE AS NULL AND VOID, THE DEED OF SALE, ENTERED INTO BY AND BETWEEN CIRILO FARINAS AND SPOUSES RICHARD GAVINO AND MA. OLIVIA AMORIN GAVINO.
5. THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO ORDER RESPONDENT QUEZON CITY REGISTER OF DEEDS TO CANCEL TCT NO. 145007 IN THE NAME OF CIRILO FARINAS AND TCT NO. 383595 [should be 383593] IN THE NAME OF SPOUSES

6. THE HONORABLE COURT OF APPEALS ERRED WHEN IT DID NOT ORDER RESPONDENT NHA (FORMERLY PHHC) TO AWARD THE LOT IN QUESTION TO PETITIONER ROSARIO BARBACINA.

We find the petition to be utterly devoid of merit.

At the outset, we emphasize that factual questions are not reviewable by the Supreme Court in a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure. There is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.<sup>[3]</sup> From such a definition, it is quite obvious that the issues raised by petitioner - i.e., whether or not Cirilo Farinas should have been disqualified as an awardee of a lot by the NHA; whether or not Cirilo Farinas has complied with the condition annotated at the back of the title issued to him; and whether or not the NHA should award the subject lot to herein petitioner - are questions of fact which cannot be raised in the present petition for review on certiorari.

Nevertheless, to put matters at rest, we will resolve the issue of whether or not the case at bar is indeed barred by *res judicata*.

It is necessary to determine whether all the elements for the application of the doctrine of *res judicata* are present in this case. In *Cayana vs. Court of Appeals*,<sup>[4]</sup> we enumerated such elements, to wit:

For *res judicata* to apply, there must be (1) a former final judgment rendered on the merits; (2) the court must have had jurisdiction over the subject matter and the parties; and, (3) identity of parties, subject matter and cause of action between the first and second actions.

In the present case, petitioner reiterated her claim that no Order dated February 13, 1980, dismissing Civil Case No. Q-28101, could be found because the records of said case are not with the Branch of the RTC which supposedly issued the same. However, the reason why the records of Civil Case No. Q-28101 could not be produced was sufficiently explained by the Branch Clerk of Court of the RTC Branch which issued said order, when he testified in another criminal case for violation of the Anti-Squatting Law (P.D. No. 772) where herein petitioner was the accused, that the records in the custody of said court had been completely destroyed on June 11, 1988.<sup>[5]</sup>

Furthermore, in the Decision of the Court of Appeals in CA-G.R. SP No. 25368, wherein the decision of the trial court in Civil Case No. Q-43359 was upheld, the Court of Appeals referred to the existence of the trial court's order dismissing Civil Case No. Q-28101. Pertinent portions of said Court of Appeals Decision dated February 17, 1992, read thus:

A Notice of Demolition issued by the Office of the City Engineer of Quezon City pursuant to administrative clearances and directed against the house of petitioner Rosario Barbacina situated at No. 11 Maginoo St., Central District, Quezon City was the spur to the filing by petitioner on August 3, 1979 of a civil suit for cancellation and/or annulment of title